

Standing Offer Arrangement Details – ICT Products and/or Services

to create a SOA under which Contracts may be established between the Supplier and Eligible Customers

<SOA title and reference number>

State of Queensland acting through <insert name>

<Supplier name>

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| --- |
| **INSTRUCTIONS FOR USING THIS DOCUMENT (TO BE DELETED FROM EXECUTION VERSION OF SOA):**  **This is the standard form Government template deed for establishing a SOA to enable Eligible Customers to enter into contracts for the purchase of the same ICT Products and/or Services using the *SOA Comprehensive Contract Conditions – ICT Products and/or Services or* *SOA General Contract Conditions – ICT Products and/or Services*.**  The lead agency which establishes the SOA and has responsibility for administering the SOA is the Principal. All Eligible Customers which buy from the Supplier under the SOA are Customers. Each Customer will enter into a separate Contract with the Supplier under the SOA.  The Principal may also be a Customer provided that it enters into a separate Contract with the Supplier after the SOA is established.  The Supplier’s responsibilities to the Principal and to the Customers are different, even when the Principal and the Customer are the same agency. Obligations to the Principal are primarily around reporting and administration of the SOA. Obligations to the Customer relate to performing the Contract to supply the Products and/or Services in accordance with agreed Requirements and Specifications.  **Highlighting in the SOA Details**  The yellow highlighted sections need to be completed with details of the Principal’s requirements under the SOA.  The Principal is to delete all highlighting before the SOA Details is executed by the parties.  **Execution of SOA**  Once the SOA has been executed as a deed, Eligible Customers can form Contracts under the SOA. |
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SOA Details– ICT Products and/or Services – Issued February 2020 – Version 1.00

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# Part A – General information

|  |  |  |
| --- | --- | --- |
| 1. Details | | |
| SOA title | | <<Insert>> |
| SOA reference number | | <<Insert>> |
| 1. Principal | | |
| **Name** | | <<Insert>> |
| **ABN or ACN** | | <<Insert>> |
| 1. Principal contact details | | |
| **Authorised representative(s)** | | <<Insert name>> |
| **Position title / role** | | <<Insert>> |
| **Phone number** | | <<Insert>> |
| **Street address** | | <<Insert>> |
| **Postal address** | | <<Insert>> |
| **Email** | | <<Insert>> |
| 1. Supplier | | |
| **Name** | | <<Insert>> |
| **ABN, ACN or ABRN** | | <<Insert>> |
| 1. Supplier Contact Details | | |
| **Authorised representative(s)** | | <<Insert name>> |
| **Position title / role** | | <<Insert>> |
| **Phone number** | | <<Insert>> |
| **Street address** | | <<Insert>> |
| **Postal address** | | <<Insert. This is the address for notices delivered to the Supplier (to its authorised representative) under the SOA.>> |
| **Email** | | <<Insert>> |
| 1. Eligible Customers (Clause 19.1) | | |
|  | | <<Specify any additional Eligible Customers >> |
| 1. Documents that form part of the SOA (Clause 1(a)(iv)(C)) | | |
| **Documents** | | <<List any documents which are incorporated into the SOA by reference. Otherwise insert "Not applicable">>  The following documents are incorporated into the SOA by reference:   1. <<insert>> 2. <<insert>>   In the event and to the extent of any inconsistency between the terms of the above documents, the order of hierarchy in descending order will prevail. |
| 1. Contract conditions which apply to the SOA | | |
|  | SOA General Contract  SOA Comprehensive Contract  <<Select which Contract applies by marking the appropriate box above. Note that the SOA Comprehensive Contract needs to be used if Systems Integration Services, Telecommunications Services and/or Managed Services are required. | |
| 1. Term (Clause 2) | | |
| **Start Date** | | <<Insert>> |
| **Initial Term** | | <<e.g. 2 years>> |
| **Further Term** | | << e.g. 2 years>> |
| 1. Authorisations (Clause 4(c)) | | |
|  | | <<Insert. Otherwise insert “Not applicable”>> |
| 1. Codes, policies, and standards (Clause 5(b)) | | |
|  | | <<Principal to specify. Review the example clauses set out in the **Social procurement clauses** factsheet issued by the Office of the Chief Adviser – Procurement and insert appropriate clauses.>> |
| 1. Requirements (Clause 6) | | |
|  | | <<Principal to insert details>> |
| 1. Conflict of Interest (Clause 12) | | |
|  | | <<Supplier to insert details of any Conflict of Interest in accordance with the ‘Conflict of Interest’ clause. If no Conflict of Interest exists, insert ‘Nil’.>> |
| 1. Reviews (Clause 14) | | |
| **Specify intervals / frequency for reviews if not annually** | | << Insert intervals/ frequency for reviews if not annually.>> |
| 1. Reporting (Clause 15) | | |
|  | | <<Specify reports to be provided to the Principal and their frequency, format and information they need to contain>> |
| 1. Escalation of SOA issues (Clause 18.4) | | |
|  | | The Principal may escalate an issue to the next level specified in the below table where a satisfactory response has not been provided or a resolution has not been reached within the specified timeframe.   |  |  |  | | --- | --- | --- | | **Escalation level** | **Representatives** | **Timeframe for response / resolution** | | 1 | Principal: <<insert name, position and contact details>>  Supplier: <<insert name, position and contact details>> | <<insert>> | | 2 | Principal: <<insert name, position and contact details>>  Supplier: <<insert name, position and contact details>> | <<insert>> | | 3 | Principal: <<insert name, position and contact details>>  Supplier: <<insert name, position and contact details>> | <<insert>> | |



# Part B - SOA Conditions for ICT Products and/or Services

to create a SOA under which Contracts may be established between the Supplier and Eligible Customers

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**SOA Conditions for ICT Products and/or Services**

These SOA Conditions are to be used in connection with the SOA Details.

## General

###### The SOA:

###### is a standing offer made by the Supplier to Eligible Customers to enter into a Contract(s) in accordance with the SOA Conditions to procure Products and/or Services from the Supplier;

###### sets out the terms on which the Supplier will provide the Products and/or Services to Eligible Customers;

###### does not place any obligation on:

###### the Supplier to provide Products and/or Services to the Principal in its capacity as the Principal;

###### Eligible Customers to the Supplier; or

###### the Principal to:

###### purchase any Products and/or Services from the Supplier;

###### be a party to, or have any obligations under, any Contract (unless a Contract has been formed with the Principal as the Customer); and

###### is made up of the following documents (in order of priority to the extent of any inconsistency):

##### the SOA Conditions in Part B of the SOA Details;

##### Parts A, C and D of the SOA Details (excluding any document in clause 1(a)(iv)(C)); and

##### any document which the SOA Details state will form part of the SOA or is otherwise expressly incorporated by reference in the SOA.

###### Any Contract entered into between an Eligible Customer and the Supplier under the SOA will be on the terms and conditions in Part D of the SOA Details.

###### The SOA is for the benefit of Eligible Customers and sets out details of the standing offer such as Pricing, the Products and/or Services Catalogue, Requirements and Specifications, and:

###### may be enforced by the Principal on behalf of all Eligible Customers; and

###### Eligible Customers are entitled to the rights and privileges under this SOA as if references to the Principal include the Eligible Customers.

## SOA term

###### The SOA starts on the Start Date and continues for the Initial Term. The Principal may extend the Initial Term by the Further Term (if any) on the same terms and conditions by notifying the Supplier at least 30 days before the end of the Initial Term or as otherwise agreed.

## No minimum volumes or exclusivity

###### Neither the Principal nor any Eligible Customer make any representation or commitment to purchase any or any minimum volume, quantity, value or amount of Products and/or Services from the Supplier, except as agreed in a Contract between a Customer and the Supplier.

###### The Supplier's appointment under this SOA is non-exclusive.

###### Eligible Customers may engage other suppliers to (or themselves) provide products and/or services which are identical or similar to the Products and/or Services.

## Supplier obligations

The Supplier must:

###### promptly comply with all reasonable requests or directions of the Principal in relation to the Supplier’s performance of the SOA;

###### create and maintain records of its performance of Contracts in accordance with usual industry practice and give the Principal reasonable access to and copies of these records on reasonable request by the Principal;

###### obtain and maintain the authorisations described in item 10 of Part A of the SOA Details and any other accreditations, licences, permits, permissions and authorities necessary for the Supplier to perform the SOA and all Contracts, and provide evidence upon request by the Principal that it has complied with this clause;

###### if the Supplier is a government owned business, local government, or Commonwealth, State or Territory authority, price its offer to comply with any applicable competitive neutrality principles of the Supplier’s jurisdiction;

###### regularly provide the Principal with an updated Products and/or Services Catalogue to reflect any new Products or Services or updates to the Supplier's then-current Products and/or Services Catalogue (including changes in the description of the Products and/or Services or Prices); and

###### comply with the Ethical Supplier Threshold. If the Customer reasonably suspects that the Supplier is not compliant with the Ethical Supplier Threshold, then the Customer must issue a written show cause notice to the Supplier. The Supplier must respond to any such show cause notice within 14 Business Days of receipt.

## Supplier representations and warranties

The Supplier represents and warrants that at all times during the term of the SOA:

###### it is fully authorised and entitled to enter into the SOA and to execute, deliver and perform its obligations under the SOA; and

###### it will perform its obligations under the SOA and all Contracts in compliance with all Laws, and any codes, policies, guidelines and standards specified in item 11 of Part A of the SOA Details.

## Requirements and Specifications for Products and/or Services

All Products and/or Services provided by the Supplier to a Customer under a Contract, unless otherwise specified by the Principal, must comply in all aspects with:

###### the terms of the SOA and that Contract, including the Requirements and Specifications specified in Part A and Part C of the SOA Details;

###### applicable Laws;

###### any applicable Queensland Government code, policy or guideline; and

###### any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO),

###### which govern the provision of the Products and/or Services.

## Pricing

### No payments under the SOA

The Prices specified in the Part C of the SOA Details are the Prices that will be payable by Customers that enter into Contracts.

### Price review

###### The parties may review the Prices in accordance with any Price review mechanism in item 4 of Part C of the SOA Details. The Prices will automatically be updated to reflect any changes as a result of the Price review mechanism and will apply to all new Contracts entered into after the date that the Price review takes effect.

###### No other Price change or new Price will be effective unless varied in accordance with clause 18.10 (Variations).

## Acknowledgements and certifications

The Supplier:

###### certifies that it has read, understands and complies with all requirements of the SOA; and

###### acknowledges that the Principal is relying on the information provided by the Supplier and referenced in the SOA in entering into the SOA, and Customers will rely on that information when in entering into Contracts.

## Principal Data

###### As between the Principal and the Supplier, the Principal owns all Principal Data, including any Intellectual Property Rights in Principal Data, on and from creation.

###### The Supplier has no right, title or interest in the Principal Data except as specified in this clause.

###### The Supplier must not use, access, modify or disclose Principal Data to any person except to its Personnel on a need to know basis to perform the SOA and in accordance with all applicable Laws.

###### The Supplier must comply with clause 11 and all applicable Laws in relation to Principal Data which is Personal Information.

###### The Supplier must provide reasonable assistance to the Principal on request to enable the Principal to comply with Laws, policies and standards applicable to the Principal in relation to Principal Data, including identification, labelling, searching, reporting, copying, retrieval and modification of Principal Data in relation to Personal Information, public records, right to information and information standards.

## Confidentiality

### Mutual obligations of confidentiality

Each party, as Recipient must:

###### keep confidential all Confidential Information of the Discloser;

###### not use the Confidential Information except for the purposes of the SOA; and

###### not disclose the Confidential Information, except:

##### to its Personnel on a need to know basis for the purposes of the SOA;

##### with the Discloser’s consent;

##### to the extent required by Law or relevant stock exchange authority;

##### to its professional advisors; or

##### in the case of the Principal:

1. to a Minister, their advisors or Parliament;
2. as required under the Right to Information Act 2009 (Qld) or the Information Privacy Act;
3. to Eligible Customers; or
4. it may disclose the terms of the SOA to any Queensland Government Body, excluding any such Queensland Government Body which is a direct competitor of the Supplier.

### Permitted disclosures

###### The Principal may publish information about the SOA on the Queensland Government’s contract directory, where required or recommended by Queensland Government policy. Nothing in the SOA prevents the Customer from disclosing information about the SOA, or any Contract entered into under the SOA, as necessary to comply with the Procurement Guidelines: Contract Disclosure.

###### Nothing in this clause 10 prevents the Customer from disclosing information about the Supplier's compliance with the Ethical Supplier Threshold to other Queensland Government entities for inclusion in a register.

###### Where the Recipient discloses Confidential Information to a third party as permitted under the SOA, the Recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible for all use and disclosure of the Confidential Information by the Recipient’s Personnel and professional advisors.

###### If the Principal requests, the Supplier must obtain from its Personnel a signed confidentiality deed in a form acceptable to the Principal which covers all Confidential Information provided by the Principal to the Supplier under the SOA.

### Publicity

Subject to clause 10.1(c)(iii), the Supplier must not make any public announcement or advertisement relating to the SOA except where the Principal has approved the proposed announcement or advertisement in writing.

### Return or destruction of material

If requested by the Principal, on termination or expiry of the SOA, the Supplier must promptly return or destroy (at the Principal’s option) all Principal Data, Confidential Information and Personal Information of the Principal and will confirm to the Principal when this has been done. The Supplier may retain a copy of any Confidential Information of the Principal to the extent required by Law, or for the Supplier’s reasonable internal credit, risk, insurance, legal and professional responsibilities.

## Privacy

### Supplier’s privacy obligations

###### This clause 11 applies if the Supplier collects or has access to Personal Information in order to perform its obligations under the SOA.

###### When performing the SOA, the Supplier must:

##### if the Principal is an ‘agency’ for the Information Privacy Act, other than for Chapter 3 of the Information Privacy Act – comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Principal, as if the Supplier were the Principal; or

##### otherwise – comply with the Australian Privacy Principles in the Privacy Act.

###### The Supplier must:

##### ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;

##### not use Personal Information collected or accessed in connection with the SOA other than for the purpose of performing its obligations under the SOA;

##### not disclose Personal Information without the prior written consent of the Principal, unless required or authorised by Law;

##### not transfer any Personal Information collected or accessed in connection with the SOA, outside of Australia, except with the prior written consent of the Principal;

##### ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this SOA;

##### ensure that its Personnel are aware of the Supplier’s obligations under this clause 11 and comply with the same obligations imposed on the Supplier under this clause;

##### fully cooperate with the Principal to enable the Principal to respond to applications for access to, or amendment of, a document containing a person’s Personal Information and to privacy complaints; and

##### comply with such other privacy measures as the Principal reasonably advises the Supplier in writing from time to time.

###### If the Principal requests, the Supplier must obtain from its Personnel a signed privacy deed in a form acceptable to the Principal which covers all Personal Information provided by the Principal to the Supplier under the SOA.

###### Nothing in this clause is intended to limit any obligation on the Supplier under the Information Privacy Act or Privacy Act (as applicable) that the Supplier may have as an organisation with respect to Personal Information.

### Notification of breach

The Supplier must immediately notify the Principal upon becoming aware of any:

###### breach of this clause 11; or

###### unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the SOA.

## Conflict of interest

###### The Supplier warrants at all times during the term of the SOA that it and its Personnel:

##### do not hold any office or possess any property;

##### are not engaged in any business or activity; or

##### do not have any obligations,

where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under the SOA, except as disclosed in item 13 of Part A of the SOA Details.

###### The Supplier must promptly notify the Principal if a Conflict of Interest arises, or appears likely to arise, and take such steps to resolve or otherwise deal with the Conflict of Interest to the reasonable satisfaction of the Principal.

###### If the Principal requests, the Supplier must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Principal.

###### The Supplier warrants that it will immediately notify the Principal if it becomes aware that any warranty made in this clause 12 is or has been inaccurate, incomplete, out-of-date or misleading in any way.

## Termination and suspension of SOA

### Termination for cause – by Principal

###### The Principal may terminate the SOA immediately on written notice if:

##### any Customer terminates a Contract for cause;

##### the Principal believes the Supplier has breached or is in breach of a warranty in clause 12;

##### the Supplier ceases business or indicates that it is unable or unwilling to complete the SOA or any Contract or to enter into new Contracts;

##### the Supplier breaches the SOA and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by the Principal;

##### the Supplier is or becomes Insolvent; or

##### having complied with clause 4(f), the Customer believes that the Supplier does not comply with the Ethical Supplier Threshold.

###### If the Principal terminates under this clause 13.1, the Supplier will pay or reimburse the Principal’s reasonable costs associated with the termination.

### Termination for convenience – by Principal

The Principal may terminate the SOA in its absolute discretion by giving at least 30 days written notice to the Supplier.

### Suspension

###### The Principal may suspend the SOA immediately on written notice in its absolute discretion.

###### The Principal may end the suspension on written notice to the Supplier.

###### The Supplier must promptly recommence performance of the SOA after receiving notice under clause 13.3(b).

###### During any period of suspension, the Supplier must comply with any reasonable directions of the Principal in relation to the subsequent performance of the SOA.

### Consequences

###### Termination or suspension of the SOA will not affect the accrued rights and remedies of the parties prior to the termination or suspension, or any Contract.

###### If the Principal terminates or suspends the SOA, the Principal is not required to pay any amount to the Supplier and will have no liability to the Supplier.

###### The Supplier must continue to perform all Contracts entered into under the SOA (including entering into statements of work formed under an existing Contract):

##### during any period of suspension of the SOA; and

##### after termination or expiry of the SOA,

##### unless the terms and conditions of that Contract specify otherwise.

###### No new Contracts may be entered into under the SOA:

##### during any period of suspension of the SOA; or

##### after termination or expiry of the SOA.

## Reviews

###### The Principal may review the Supplier’s performance of its obligations in respect of the SOA and any and all Contracts entered into under the SOA on an annual basis or such other period specified in item 14 of Part A of the SOA Details.

###### The Supplier must attend any review meetings, and provide such documentation, reports and data, as and when required by the Principal.

###### The Principal will be responsible for determining the place, time and agenda for any performance review meetings, and notify the Supplier of same.

###### The Supplier must otherwise attend meetings with, or provide briefings to, the Principal’s nominated officers, as reasonably required by the Principal from time to time.

## Reporting

The Supplier must:

###### provide written reports to the Principal at the frequency, in the format and containing the information, specified in item 15 of Part A of the SOA Details; and

###### provide a written report to the State of Queensland each quarter during the term of the SOA identifying the Contracts entered into under the SOA, including the name of the Customer, the SOA number and the spend under the Contract.

## Changes to the Product and/or Service Catalogue

###### Each party may request a change to the SOA Details regarding:

##### the scope or description of any Products and/or Services in Part C of the SOA Details; or

##### Requirements in item 12 of Part A of the SOA Details and/or Specifications for Products and/or Services in Part C of the SOA Details,

##### by issuing a notice in writing to the other party including all relevant details of the requested change.

###### Irrespective of who requests the change, the Supplier must provide to the Principal a change proposal prepared in accordance with clause 16(c).

###### A change proposal must specify:

##### a full description of the requested change;

##### reasons for requesting the change (where the change is requested by the Supplier);

##### any consequential changes to the terms and conditions of the SOA, including the Price, as a result of implementing the requested change;

##### evidence to substantiate the requested change; and

##### such other information as reasonably requested by the Principal.

###### Any proposed consequential change to the Price specified in a change proposal must be based on the Supplier’s reasonable costs which will be directly incurred by the Supplier as a result of the Supplier effecting the change.

###### If the parties agree to the change proposal, then the parties will sign the change proposal and the SOA will be varied in accordance with clause 18.10 (Variations) on and from the date the change proposal is executed by both parties (Variation Date). The SOA as varied will not apply to Contracts in place prior to the Variation Date. The SOA as varied will apply to new Contracts, and statements of work formed under a new or existing Contracts, entered into after the Variation Date.

###### Notices

###### Each party must send all notices relating to the SOA to the other party’s authorised representative.

###### A notice will be deemed to be received:

##### if posted, five Business Days after posting within Australia or ten Business Days, if posted to or from an address outside Australia;

##### if delivered by hand during a Business Day – on the date of delivery;

##### if emailed – subject to clause 17(c) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.

###### A notice of suspension or termination of the SOA which is sent via email must also be sent by post, hand delivery or in any other way permitted by Law.

## General

### Assignment

###### The Supplier must not assign, transfer or novate any of its rights or obligations under the SOA without the Principal’s prior written consent.

###### The Principal may assign, transfer or novate any of its rights or obligations under the SOA on written notice to the Supplier.

### Costs

Each party will bear its own costs in relation to the preparation, negotiation and execution of the SOA and any variations to the SOA.

### Counterparts

The SOA may consist of a number of counterparts and if so, the signed counterparts taken together constitute one document.

### Disputes

###### Without limiting the Principal’s rights and remedies under the SOA, the Principal may raise and escalate any issues that arise under the SOA in accordance with any escalation details set out in the SOA Details.

###### Neither party may commence court proceedings or action against the other party under or in connection with the SOA (other than where urgent interlocutory relief is required) unless it has first made reasonable efforts to resolve the dispute in accordance with the escalation process set out in item 16 of Part A of the SOA Details.

### Entire agreement

###### The SOA sets out all of the rights and obligations of the Principal and Supplier relating to the subject matter of the SOA. No other terms apply to the SOA.

###### The *Sale of Goods (Vienna Convention) Act 1986* (Qld) does not apply, to the extent that the parties are permitted by Law to exclude it.

### Further assurance

Each party will promptly do further acts and execute and deliver further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by the other party to give effect to the SOA.

### Governing law

The SOA is governed by and is to be constructed in accordance with the Laws applicable in Queensland. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland.

### Relationship of the parties

The parties agree that their relationship is of principal and contractor. Nothing in the SOA is intended to create any partnership, joint venture, agency or employment relationship between the parties. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venture, officer or employee of the Principal.

### Survival

Clauses 1, 3, 7, 9, 10, 11, 13.4, 17, 19; and any other clause in the SOA which is expressed to survive or by its nature survives, will survive termination or expiry of the SOA for any reason.

### Variations

The SOA may only be varied by written agreement between the parties signed by authorised representatives of the parties.

### Waiver

Clauses and rights in the SOA can only be waived in writing by the waiving party. Failure or delay of a party in exercising a right under the SOA does not waive the party’s rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances.

## Definitions and interpretation

### Definitions

In the SOA, unless the context otherwise requires, the following definitions apply.

**Business Day** means any day other than a Saturday, Sunday or public holiday, in relation to the SOA – at the Principal’s address.

**Confidential Information** means all information disclosed by or on behalf of the Principal or the Customer, as applicable, or the Supplier (**Discloser**) to the other party (**Recipient**) in connection with the SOA or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:

* + 1. is or becomes public, except through breach of a confidentiality obligation;
    2. the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or
    3. the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.

**Conflict of Interest** includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

**Contract** means an agreement between a Customer and the Supplier comprised of the document attached at Part D of the SOA Details by which the Customer accepts the SOA and the Supplier agrees to supply the Products and/or Services that are the subject of a SOA.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Customer** means in relation to the:

* + 1. SOA – Eligible Customers; and
    2. Contract – the entity specified in the Contract.

**Customer Requirements** means the standards, Customer Specifications and other requirements for the Deliverables and the performance of the Supplier’s obligations under the Contract, which are set out in the Contract.

1. **Customer Specifications**:
   * 1. in respect of Products, Services and Deliverables, mean the requirements set out or referred to in the Contract, including all agreed requirements as to quality, functionality, performance, interoperability, testing and other matters;
     2. in respect of any Licensed Software, Hardware and As a Service supplied under the Contract (where applicable and as defined under that Contract), includes any published specifications of the Supplier or a third party manufacturer or supplier relating to the Licensed Software, Hardware and As a Service (as applicable).
2. **Deliverables** means the Products, Services and documentation to be provided to the Customer including as described in the Contract and the Requirements.
3. **Eligible Customers** means all of the following entities:
   * 1. Queensland Government departments and agencies;
     2. Queensland Government Bodies;
     3. any entity which is directly or indirectly, partially or entirely funded by the State of Queensland and/or a community based, non-profit making organisation performing community services,
     4. any entity, from time to time approved by the Principal as an Eligible Customer under the SOA
     5. the Commonwealth, another State or a Territory Government; and
     6. any other entity specified in item 6 of Part A of the SOA Details.
4. **Ethical Supplier Threshold** means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.
5. **Initial Term** means the initial term set out in item 9 of Part A of the SOA Details.
6. **Further Term** means the further term set out in item 9 of Part A of the SOA Details.
7. A person or entity is **Insolvent** if:
   * 1. it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
     2. it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
     3. it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
     4. an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
     5. it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
     6. it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
     7. it is otherwise unable to pay its debts when they fall due, or something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.
8. **Information Privacy Act** means the Information Privacy Act 2009 (Qld).

**Intellectual Property Rights** includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract, but excludes Moral Rights.

1. **Laws** means all:
   * 1. Acts, ordinances, regulations, by-laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction;
     2. certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables; and
     3. the requirements of any authority with jurisdiction in respect of the Deliverables.

**Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968 (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of Contract.

1. **Personal Information** has the meaning given:
   * 1. for the purpose of the Information Privacy Act – in that Act; or
     2. for the purposes of the Privacy Act – in that Act.

**Personnel** means officers, directors, employees and agents, and in the case of the Supplier, includes any subcontractor and the subcontractor’s officers, directors, employees and agents.

**Price** means for the Products and/or Services, the price or prices described in Part C of the SOA Details or calculated using a calculation method specified in Part C of the SOA Details.

**Principal** means the State of Queensland acting through the entity so described in item 2 of Part A of the SOA Details which is responsible for administering the SOA.

**Principal Data** means any information, material, data, dataset or database to the extent provided by or on behalf of the Principal to the Supplier under the SOA or to the extent created, processed, produced or derived by or on behalf of the Supplier under the SOA using that information, material, data, dataset or database.

**Principal Requirements** means the standards, Principal Specifications and other requirements for the Deliverables and the performance of the Supplier’s obligations under the Contract, which are set out in item 12 of Part A of the SOA Details.

**Principal Specifications**:

* + 1. in respect of Products, Services and Deliverables, mean the requirements set out or referred to in Part C of the SOA Details, including all agreed requirements as to quality, functionality, performance, interoperability, testing and other matters; and
    2. in respect of any Licensed Software, Hardware and As a Service (where applicable) supplied under a Contract, includes any published specifications of the Supplier or a third party manufacturer or supplier relating to the Licensed Software, Hardware and As a Service (as applicable).

**Privacy Act** means the Privacy Act 1988 (Cth).

**Procurement Guidelines: Contract Disclosure** means the Procurement Guidelines: Contract Disclosure issued by the Director-General, Department of Housing and Public Works.

**Products** means products the Supplier will provide under the Contract, described in Part C of the SOA Details.

**Products and/or Services Catalogue** means the catalogue in Part C of the SOA Details.

**Queensland Government Body** means any of:

* + 1. a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);
    2. a body established by the State of Queensland through the Governor or a Minister; or
    3. an incorporated or unincorporated body over which the State of Queensland exercises control.

**Queensland Procurement Policy** means the Queensland Procurement Policy as published by the Department of Housing and Public Works.

**Requirements** means the:

* + 1. Principal Requirements; and
    2. Customer Requirements.

**Services** means services the Supplier will provide under the Contract, described in Part C of the SOA Details.

**SOA** means the standing offer arrangement deed entered into between the Principal and the Supplier, made up of the documents specified in clause 1(a)(iv) of the SOA Conditions.

**SOA Conditions** means Part B of this document titled '*SOA Conditions for ICT Products and/or Services*'.

**SOA Details** means the document titled ‘*Standing Offer Arrangement Details – ICT Products and/or Services’* that contains information about a specific SOA between the Principal and the Supplier.

**Specifications** means the:

* + 1. Principal Specifications; and
    2. Customer Specifications.

**Start Date** means the start date indicated in item 9 of Part A of the SOA Details.

**Supplier** means the entity so described in the item 4 of Part A of the SOA Details responsible for performing obligations under:

* + 1. the SOA; and
    2. any Contract entered into under the SOA**.**

### Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

* + 1. (**agreement**) a reference to an agreement includes any variation or replacement of the agreement;
    2. (**Business Day**) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
    3. (**currency**) all currency amounts are in Australian dollars;
    4. (**headings**) headings are provided for convenience and do not affect the interpretation of the documents making up the SOA;
    5. (**includes**) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
    6. (**corresponding meaning**) if a word or phrase is defined its other grammatical forms have corresponding meanings;
    7. (**joint and several**) agreements, representations and warranties made by two or more people will bind them jointly and severally;
    8. (**law**) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
    9. (**person**) a person includes the person’s executors, administrators and permitted novatees and assignees;
    10. (**construction**) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
    11. (**severability**) if any part of the SOA is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the SOA will not apply but the other parts of the SOA will not be affected.

# Part C – Products and/or Services Catalogue

The Supplier must provide the Products and/or Services to Customers, in accordance with the Requirements and Specifications and at the Prices described in these SOA Details.

A Customer may, in its Contract, specify the particular Products and/or Services to be provided by the Supplier to the Customer in the Contract.

**Products and/or Services**

<<Insert a detailed description of the Products and/or Services to be supplied by the Supplier under the SOA. Include as much detail as possible. Delete any of the sections below if they are not applicable>>

**Description of Products**

<<Principal to insert.>>

**Description of Services**

<<Principal to insert>>**Specifications**

|  |
| --- |
| The Supplier must provide the Products and/or Services specified above in this Part C to Customers, in accordance with the Requirements described in Part A in these SOA Details and these Specifications.  The Customer and the Supplier may agree additional Requirements and Specifications for the Products and/or Services in the Contract. |

<<Principal to insert.>>

**Price**

|  |
| --- |
| This section sets out the pricing which is available to Eligible Customers for their Contracts. |

1. Price (Clause 7)

|  |  |  |  |
| --- | --- | --- | --- |
| **Description** | **Unit Price (Excl. GST)** | **Price (GST component only)** | **Total Price (Incl. GST)** |
| <<Insert Products and/or Services item description>> | $<<insert>> | $<<insert>> | $<<insert>> |
| <<Insert Products and/or Services item description>> | $<<insert>> | $<<insert>> | $<<insert>> |
| Delivery and installation details and charges (if applicable) | | $<<insert>> | $<<insert>> |
| **TOTAL PRICE** | | |  |

1. Discounts or rebates

<<Insert details of any applicable discounts (e.g. trade discounts, early payment discounts, volume discounts) or rebates. If it is to be determined by the Customer, specify “To be specified in the Contract”>>

1. Expenses

<<Insert (if any)>>

1. Price reviews (Clause 7.2(a))

<<Insert (if any) >>

# Part D – Contract

<<Copy of QITC SOA Comprehensive Contract or SOA General Contract to be inserted here. Note that these documents have been modified from the template QITC documents, and so the template QITC documents cannot be used with this SOA.>>

**EXECUTION OF SOA**

|  |
| --- |
| **INSTRUCTIONS TO STATE:**  These execution panels apply to the establishment of the SOA. In order to establish the SOA, the authorised representatives of the Principal and the Supplier must sign the corresponding execution panels below. |

The parties to this deed have executed the deed on the dates set out below:

EXECUTED AS A DEED

EXECUTION BY STATE:

|  |  |  |
| --- | --- | --- |
| SIGNED SEALED AND DELIVERED for and on behalf of the State of Queensland (acting through the <<insert name of Government department/agency>>) by  ………………………………………  (insert name of authorised representative of the Principal)  this <<insert date>> day of <<insert month>>, <<insert year>>  in the presence of:  …………………………………….  <<insert full name of witness>> | )))))))))))) )) | Signature of authorised representative of the Principal  Signature of witness |

EXECUTION BY SUPPLIER:

|  |  |  |
| --- | --- | --- |
| SIGNED SEALED AND DELIVERED for and on behalf of <<insert full name of the Supplier and ACN/ABN>>  ***in accordance with s. 127 of the Corporations Act 2001 (Cth)***  this <<insert date>> day of <<insert month>>, <<insert year>> by  <<insert full name of Director>>  <<insert full name of Director/Secretary>>  in the presence of:  <<insert full name of witness>> | )))))))))))) )) | Signature of Director  Signature of Director/Secretary  Signature of Witness |

***Privacy Statement*** - The Principal is collecting Personal Information from the Supplier for the purpose of administering the SOA and any Contract. This Personal Information may be disclosed to Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States or Territories for the purpose of administering the SOA and any Contract, or made publicly available in accordance with the requirements of the Principal Procurement Policy. Personal Information will not otherwise be disclosed to any other third party without consent of the Supplier, except where authorised or required by law.